FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.6173 OF 2004

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

---

Mr.Surel S.Shah for the petitioner

Mr.S.S.Kanetkar i/by G.S.Godbole
for the Respondent No.1.

Coram : R.S.Mohite,J

Date : 23.11.2005.

PC

1. This petition challenges an order dated 25.3.2004 passed by the Jt.Civil Judge, Junior Division Mohol, rejecting the application filed by original defendant no.1 in R.C.Suit No.155/1993 for permission to file a separate written statement. A perusal of the order indicates that the two defendants in the suit have filed a joint written statement.

In this written statement, defendant no.1 had supported the case of defendant no.2 and had denied the claim of the plaintiff to tenancy in the suit property. He now wants to file a 2nd written statement on the footing that earlier written statement was obtained by undue influence. The trial Court referred to the provisions of Order VIII Rule 9 of the CPC which indicate that there is no pleading subsequent to the written statement of a defendant other than by way of defence to a set-off (or counter claim) shall be presented. Order VI Rule 7 also provides that no pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleading of the party pleading the same. It is open for defendant no.1 to enter the witness box and to explain his previous statement.

2. In the circumstances, not a fit case to interfere in writ jurisdiction under Article 227 of the Constitution of India. Petition is rejected.

3. The Advocate for the petitioner states that he would like to make an application for amendment of the written statement. I am not called upon to decide as to whether any such amendment can be done. If he made any such application, the same may be decided in accordance with law.

(R.S.Mohite,J)